S.B.Civil Second Appeal NO.337/2004
Jetha Ram
vs.
Smt. Geeta

DATE OF ORDER : - 27.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sajjan Singh, for the appellant.

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Heard learned counsel for the appellant.

This second appeal is against the concurrent findings of fact recorded by the two courts below by which the two courts below held that appellant is tenant in the suit premises and respondent-plaintiff is the landlord of the appellant-defendant. The trial court held that the defendant also denied the title and relationship of the respondent-landlord and also failed to pay the rent during the pendency of the suit and he did not even deposit the determined rent. In the trial court defence of the defendant was struck off under Section 13(5) of the Rajasthan (Control of Rent and Eviction) Act, 1950. The suit was decreed on the ground of personal bonafide necessity also alongwith the ground of default as well as on the ground of denial of title.

The appellant preferred appeal against the judgment and decree of the

trial court dated 31st July, 2001, which was dismissed by the appellate court vide judgment and decree dated 9th August, 2004.

According to learned counsel for the appellant, the plaintiff is not owner of the property in dispute nor she could prove the relationship of landlord and tenant between the appellant and the respondent. Learned counsel for the appellant submits that admittedly, the rent receipt was not written by the plaintiff, but it is alleged that his son gave the rent receipts. Learned counsel for the appellant tried to point out towards the evidence to show some discrepancies in the evidence of the plaintiff's son as plaintiff's son could not specifically stated on oath that in which month and whether he received the rent from the tenant. It is also submitted by learned counsel for the appellant that the pleading of the plaintiff was not sufficient and in view of the judgment of the Hon'ble Apex court, the evidence cannot be looked into in case where there is no pleading.

After going through the facts of the case, I found from the reasons given in the judgments of the two courts below that both the courts below relied upon the rent receipt produced by the plaintiff, which are said to be issued by plaintiff's son and the receipts bears the signatures of the defendant. The signature of the defendant tenant on the receipts is a pure question of fact and

has been found proved by the two courts below concurrently after appreciation of the oral as well as documentary evidence. The discrepancies, which have been shown are not at all relevant discrepancies as no one is supposed to remember the exact dates on which the rent was paid by the tenant in case where there is documentary evidence and the documents contains the dates. When the relationship of landlord and tenant has been proved by the plaintiff, the question of title is not at all relevant in the suit for eviction filed by the landlord against the tenant.

So far as objection of lack of pleading is concerned, admittedly, the objection has not been raised by the defendant in written statement or at the earliest stage. The trial court framed the issues, which are very specific and made clear what are the issues and for which allegations, the defendant was called upon to face the trial of the suit. The defendant even submitted written statement and on the basis of those pleas taken in the written statement, the issues were framed. Therefore, I do not find that there is any lack of pleading in the plaint nor there is any reason to permit such an objection at such belated stage.

In view of the above, I do not find any merit in this appeal having no substantial questions of law involved in it. Hence, the appeal of the appellant is dismissed.

(Prakash Tatia), J.

c.p.goyal/-